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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/576,642	04/21/2006	Martin Terence Cole	2007P11313WOUS	2388
24131 7590 02/26/2009 LERNER GREENBERG STEMER LLP P O BOX 2480 HOLLYWOOD, FL 33022-2480			EXAMINER STAFIRA, MICHAEL PATRICK	
			ART UNIT 2886	PAPER NUMBER
			MAIL DATE 02/26/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/576,642	Applicant(s) COLE, MARTIN TERENCE	
	Examiner /Michael P. Stafira/	Art Unit 2886	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-16,44 and 53 is/are pending in the application.
- 4a) Of the above claim(s) 17-43,46-52 and 54-66 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,4-16,44 and 53 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/28/2009</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Claims 17-43, 46-52, 54-66 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected groups, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/24/2008.

Priority

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 15, 16, 44 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1, 15, 16, 44 it is unclear and indefinite how the subtracting the first signal from the second signal is going to cancel the changes of the chamber over time. Applicant own specification indicates that this is done with a reference channel and a sample channel not by a first channel and a second channel as indicated in the claim limitations. Therefore, it levels the claim limitations unclear and indefinite. Therefore, the examiner is going to examiner the

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limitations in light of the specification and not by subtracting the signals from the first and second signals since there is no support for those limitations.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-16, 44, 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/59737 A1 in view of Booth et al. ('445).

Claim 1

WO 01/59737 A1 discloses providing the sample in a chamber (See Fig. 1) illuminating the sample in the chamber with a first wavelength of light, obtaining a first response signal indicative of the first illumination, illuminating the sample in the chamber with a second wavelength of light, obtaining a second response signal indicative of the second illumination (Page 6, lines 25-31), and determining the presence of the particles having the size or range of size(s) (Page 14, lines 10-11), while canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21).

WO 01/59737 A1 substantially teaches the claimed invention except that it does not show canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22,

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lines 63-21). Booth et al. ('445) shows that it is known to provide a method of canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21) for an optical smoke detector. It would have been obvious to combine the device of WO 01/59737 A1 with the canceling out influences of Booth et al. ('445) for the purpose of providing a calibration method which provides a more sensitive measured data, therefore providing more accurate measured information which increases reliability.

Claim 4

WO 01/59737 A1 discloses the second wavelength provides a response signal for particle sizes both substantially of the size or in the predetermined range and particle sizes substantially not of the size or outside the predetermined range, and the first wavelength provides a response signal for particle sizes substantially not of the size or outside the predetermined range (Page 14, lines 2-9).

Claim 5

WO 01/59737 A1 discloses upon detecting particles of the predetermined size(s), triggering an alarm signal (Page 14, lines 12-19).

Claim 6

WO 01/59737 A1 discloses the alarm signal is indicative of an alarm condition for a pyrolysis, smouldering and/or smoke event (Page 14, lines 12-19).

Claim 7

WO 01/59737 A1 discloses the first wavelength is infrared light and the second wavelength is blue light (Page 12, lines 7-9).

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Claim 8

WO 01/59737 A1 discloses the first wavelength of light is in the range of 650 nm to 1050 nm, and second wavelength of light is in the range of 400 nm to 500 nm (Page 12, lines 7-9).

Claim 9

WO 01/59737 A1 discloses illuminating the sample with at least one further wavelength of light, in which particles of at least one further size(s) or range of size(s) are relatively responsive to the further wavelength of light, obtaining at least one further response signal(s) indicative of the further illumination, and determining the presence of the particles of the further size(s) or range of sizes by comparing the first, second and/or further signal(s) (Page. 14, lines 2-14).

Claim 10

WO 01/59737 A1 discloses at least one of the illuminations is polarized (Page 7, lines 3-5).

Claim 11

WO 01/59737 A1 further discloses at least one of the illuminations is horizontally and/or vertically polarized (Page 7, lines 3-5).

Claim 12

WO 01/59737 A1 further discloses the first illumination is a relatively longer wavelength horizontally polarized and the second illumination is a relatively short wavelength vertically polarized (Page 20, Claim 2) .

Claim 13

WO 01/59737 A1 discloses the first illumination is a red or infrared light horizontally

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polarized and the second illumination is a blue wavelength light vertically polarized (Page 12, lines 12-14).

Claim 14

WO 01/59737 A1 further discloses the first illumination is a red or infrared light horizontally polarized and the second illumination is a blue light un-polarized (Page 12, lines 12-15).

Claim 15

WO 01/59737 A1 discloses first illumination means for illuminating the sample in the chamber with a first wavelength of light, the first light being of a wavelength to which particles of a first size(s) are relatively responsive, a first signal means for providing a first signal indicative of the first illumination (Page 6, 25-31), second illumination means for illuminating the sample with a second wavelength of light, the second light being of a wavelength to which particles of a second size(s) are relatively responsive, a second signal means for providing a second signal indicative of the second illumination (Page 6, 25-31), logic means for determining the presence of the particles in the predetermined range (Page 14, lines 5-19).

WO 01/59737 A1 substantially teaches the claimed invention except that it does not show canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21). Booth et al. ('445) shows that it is known to provide a method of canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21) for an optical smoke detector. It would have been obvious to combine the device of WO 01/59737

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A1 with the canceling out influences of Booth et al. ('445) for the purpose of providing a calibration method which provides a more sensitive measured data, therefore providing more accurate measured information which increases reliability.

Claim 16

WO 01/59737 A1 discloses processor means (Pages 14, lines 12-19) adapted to operate in accordance with a predetermined instruction set, said apparatus, in conjunction with said instruction set, being adapted to perform the method comprising the steps of: illuminating the sample in the chamber with a first wavelength of light, obtaining a first response signal indicative of the first illumination (Page 6, lines 25-31), illuminating the sample in the chamber with a second wavelength of light, obtaining a second response signal indicative of the second illumination (Page 6, lines 25-31), and determining the presence of the particles having the size or range of size(s) (Page 14, lines 10-11).

WO 01/59737 A1 substantially teaches the claimed invention except that it does not show canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21). Booth et al. ('445) shows that it is known to provide a method of canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21) for an optical smoke detector. It would have been obvious to combine the device of WO 01/59737 A1 with the canceling out influences of Booth et al. ('445) for the purpose of providing a calibration method which provides a more sensitive measured data, therefore providing more accurate measured information which increases reliability.

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Claim 44

WO 01/59737 A1 discloses a processor means (Page 14, lines 12-19) adapted to operate in accordance with a predetermined instruction set, said apparatus, in conjunction with said instruction set, being adapted to perform the method comprising the steps of: illuminating the sample in the chamber with a first wavelength of light, obtaining a first response signal indicative of the first illumination (Page 6, lines 25-31), illuminating the sample in the chamber with a second wavelength of light obtaining a second response signal indicative of the second illumination (Page 6, lines 25-31), and determining the presence of the particles having the size or range of size(s) (Page 14, lines 10-11).

WO 01/59737 A1 substantially teaches the claimed invention except that it does not show canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21). Booth et al. ('445) shows that it is known to provide a method of canceling out influences on the first signal and on the second signal due to changes in the chamber that occur over time, by subtracting the first signal from the second signal (Col. 21-22, lines 63-21) for an optical smoke detector. It would have been obvious to combine the device of WO 01/59737 A1 with the canceling out influences of Booth et al. ('445) for the purpose of providing a calibration method which provides a more sensitive measured data, therefore providing more accurate measured information which increases reliability.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 53 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 01/59737 A1.

WO 01/59737 A1 discloses the claimed invention except for the apparatus is a point detector. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine WO 01/59737 A1 with the point detector since it was well known in the art that a point detector limits the amount of background noise therefore increasing the sensitivity of the measured data.

Response to Arguments

8. Applicant's arguments with respect to claims 1, 4-16, 44, 53 have been considered but are moot in view of the new ground(s) of rejection.

With regards to applicant's response on page 20, it is the examiner's position that to be able to cancel the noise from the chamber one would need to have a reference signal which is subtracted from a measured sample signal as indicated in applicant specification. Subtracting the first wavelength signal from the second wavelength signal is only going to give you the difference between the two signals and not noise signals created as soil

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has built-up in the chamber. Therefore, the independent claim limitations are unclear and indefinite.

With regards to applicant's response on pages 20-21 (Claim 53), it is the examiner's position that applicant has no support for a "point detector" anywhere in the specification and therefore has no patentable weight.

Further applicant's listing of CLAIM AMENDMENTS needs to indicate in () that claims 17-43, 46-52, 54-66 are (Withdrawn) or (Canceled).

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to /Michael P. Stafira/ whose telephone number is 571-272-2430.

The examiner can normally be reached on 4/10 Schedule Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tarifur Chowdhury can be reached on 571-272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael P. Stafira/
Primary Examiner
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February 20, 2009